

United States
Circuit Court of Appeals
For the Ninth Circuit.

TAKAO OZAWA,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Territory of Hawaii.

Filed

DEC 22 1916

F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Petitioner Takao Ozawa,

CASTLE & WITHINGTON, #125 Merchant
St., Honolulu, Hawaii.

J. LIGHTFOOT, Esq., Kapiolani Bldg., Hono-
lulu, Hawaii.

For United States of America,

S. C. HUBER, Esq., United States District
Attorney, Honolulu, Hawaii. [1*]

Statement of Clerk.

TIME OF COMMENCEMENT OF CAUSE.

October 16, 1914: Petition for Naturalization filed.

NAMES OF ORIGINAL PARTIES.

Petitioner: Takao Ozawa.

Respondent: United States of America.

DATES OF FILING OF THE PLEADINGS.

October 16, 1914. Petition.

HEARINGS.

January 30, 1915: Proceedings at hearing, peti-
tioner and witnesses sworn and excused and continu-
ance to February 13, 1915, for further hearing.

March 25, 1916: Proceedings at decision denying
petition.

September 23, 1916: Proceedings at perfection of
appeal.

*Page-number appearing at foot of page of original certified Tran-
script of Record.

DECISION.

March 25, 1916: Decision denying Petition for Naturalization, by CLEMONS, J.

PETITION FOR APPEAL.

September 23, 1916: Petition for Appeal and Order allowing same filed.

United States of America,
District of Hawaii,—ss.

I, George R. Clark, Clerk of the United States District Court for the District of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled suit, the names of the original parties thereto; the several dates when the respective pleadings were filed; and account of the proceedings herein and the time when the judgment herein was rendered and the Judge rendering same, in the matter of Takao Ozawa, a petitioner for Naturalization, Number 274, in the United States District Court for the District of Hawaii. [2]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 17th day of November, A. D. 1916.

[Seal]

GEORGE R. CLARK,
Clerk U. S. District Court, Territory of Hawaii.

[3]

*In the United States District Court in and for the
District and Territory of Hawaii.*

No. 274.

In the Matter of TAKAO OZAWA, a Petitioner
for Naturalization.

**Order Extending Time to Transmit Record on
Appeal.**

Now on the 23d day of October, A. D. 1916, it appearing from the representations of the clerk of this court, that it is impracticable for said clerk to prepare and to transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of record on assignment of errors in the above-entitled matter within the time limited therefor by the Citation on Appeal heretofore issued in this cause, and it is ordered that the time within which the clerk of this court shall prepare and transmit said transcript of the record on assignment of errors in this matter, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to November 30, 1916.

CHAS. F. CLEMONS,

Judge U. S. District Court, Territory of Hawaii.

Dated, Honolulu, Hawaii, October 23, 1916.

Due service of the above order, and receipt of a

copy thereof are hereby admitted this 23d day of October, A. D. 1916.

CASTLE & WITHINGTON,
By J. LIGHTFOOT,
J. LIGHTFOOT,
Attorneys for Appellant.

Filed Oct. 23, 1916, at 4 O'clock and — Minutes
P. M. George R. Clark, Clerk. —————, Deputy Clerk. [4]

Declaration of Intention.

(Vignette.)

State of California,
County of Alameda,—ss.

Before the Clerk of the Superior Court Appeared, Takao Ozawa, a native of Japan, who, being duly sworn, upon his oath declares that it is bona fide his intention to become a citizen of the United States of America, and to renounce forever all allegiance and fidelity to all and any Foreign Prince, Potentate, State and Sovereignty whatever, and particularly to Mutsuhito, Emperor of Japan, of whom he is at present a subject.

(Sgd.) TAKAO OZAWA.

Subscribed and sworn to before me this 1st day of Aug., A. D. 1902.

Deputy Clerk.

I, Frank C. Jordan, Clerk of the Superior Court in and for the County of Alameda, the same being a

court of record, having common-law jurisdiction, a clerk and seal, do hereby certify that the foregoing is a true copy of the original Declaration of Intention of Takao Ozawa to become a citizen of the United States of America, now of record in my office.

TO ATTEST AND CERTIFY WHICH, I have hereunto set my hand and affixed the seal of said court, this 1 day of Aug., A. D. 1902.

[Seal]

FRANK C. JORDAN,
Clerk.

By (Sgd.) L. R. McKILLICAN,
Deputy. [5]

NO. 274.

ORIGINAL.

UNITED STATES OF AMERICA.

PETITION FOR NATURALIZATION.

To the Honorable UNITED STATES DISTRICT
COURT OF TERRITORY OF HAWAII.

The petition of Takao Ozawa hereby filed, respectfully showeth

First: My Place of residence is #1322 Kamehameha 4th Road, Honolulu, Hawaii.

(Give number, street, city or town, and State.)

Second: My occupation is Salesman.

Third: I was born on the 15th day of June, Anno Domini 1875, at Sakuraimura, Japan.

Fourth: I emigrated to the United States from Yokohama, Japan, on or about the 17th day of July Anno Domini 1894, and arrived in the United States, at the port of San Francisco, California, on the 29th

day of July Anno Domini 1894, on the vessel S. S. "Galic."

(If the alien arrived otherwise than by vessel, the character of conveyance or name of transportation company should be given.)

Fifth: I declared my intention to become a citizen of the United States on the 1st day of August, Anno Domini 1902 at Oakland, California, in the Superior Court of County of Alameda, California.

Sixth: I am married. My wife's name is Masako Ozawa. She was born in Yamakuchi, Japan, and now resides at #1322 Kamehameha 4th Road, Honolulu, Hawaii.

(Give number, street, city or town, and State.)

I have two children, and the name, date and place of birth, and place of residence of each of said children is as follows: Takako, born July 24, 1909, at Honolulu, Hawaii, and resides at Honolulu, Hawaii, Edith Sachiko, born October 16th, 1912, at Honolulu, Hawaii, and resides at Honolulu, Hawaii.

Seventh: I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached [6] to the principles of the Constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to Yoshihito, Emperor of Japan, of whom at this time I am a subject, and it is my intention to reside permanently in the United States.

Eighth: I am able to speak the English language.

Ninth: I have resided continuously in the United States of America for the term of five years at least, immediately preceding the date of this petition, to wit, since the 29th day of July, Anno Domini 1894, and in the Territory of Hawaii, continuously next preceding the date of this petition, since the 25th day of May, Anno Domini 1906, being a residence within this Territory of at least one year next preceding the date of this petition.

Tenth: I have not heretofore made petition for citizenship to any court.

Attached hereto and made a part of this petition are my declaration of intention to become a citizen of the United States, together with my affidavit and the affidavits of the two verifying witnesses thereto, required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

(Sgd.) TAKAO OZAWA,

(Complete and true signature of petitioner.)

Declaration of Intention filed this 16th day of October, 1914.

Affidavits of Petitioner and Witnesses.

United States of America,
Territory of Hawaii,—ss.

The aforesaid petitioner being duly sworn, deposes and says that he is the petitioner in the above-entitled proceedings; that he has read the foregoing petition and knows the contents thereof; that the

said petition is signed with his full, true name; that the same is true of his own knowledge except as to matters therein stated to be alleged upon information and belief, and that as to those matters [7] he believes it to be true.

(Sgd.) TAKAO OZAWA,

(Complete and true signature of petitioner.)

Benjamin Hornblower Clarke, occupation salesman, residing at Honolulu, Hawaii, and Louis Aloysius Perry, occupation clerk, residing at Honolulu, Hawaii, each being severally, duly, and respectively sworn, deposes and says that he is a citizen of the United States of America; that he has personally known Takao Ozawa, the petitioner above mentioned, to have resided in the United States continuously immediately preceding the date of filing his petition, since the 1st day of January, Anno Domini 1909, and in the Territory in which the above-entitled petition is made continuously since the 1st day of January, Anno Domini 1909; and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and that the petitioner is in every way qualified, in his opinion, to be admitted a citizen of the United States.

(Sgd.) BENJAMIN H. CLARK,

(Signature of witness.)

(Sgd.) LOUIS A. PERRY,

(Signature of witness.)

Subscribed and sworn to before me by the above-named petitioner and witnesses this 16th day of October, Anno Domini 1914.

[Seal] (Sgd.) A. E. MURPHY,
Clerk. [8]

In the Matter of the Petition of Takao Ozawa, to be Admitted a Citizen of the United States of America.

Filed Oct. 16, 1914.

OATH OF ALLEGIANCE.

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to Yoshihito, Emperor of Japan, of whom I have heretofore been a subject, that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same.

Subscribed and sworn to before me, in open court, this — day of —, A. D. 191—

Clerk.

ORDER OF COURT ADMITTING PETITIONER.

Upon consideration of the petition of Takao Ozawa, and affidavits in support thereof, and further testimony taken in open court, it is ordered that the said petitioner, who has taken the oath required

by law, be, and hereby is, admitted to become a citizen of the United States of America, this —— day of —— A. D. 19——.

By the Court:

_____, J——.

ORDER OF COURT DENYING PETITION.

Upon consideration of the petition of Takao Ozawa and the motion of Hon. Horace W. Vaughan, United States Attorney, who appeared for the United States in open court this 25th day of March, 1916, it appearing that he is ineligible to citizenship, as shown more fully in my decision of this day. [9]

The said petition is hereby denied.

(Sgd.) CHAS. F. CLEMONS,
Judge. [10]

Minutes of Court—January 30, 1915—Proceedings at Hearing and Order of Continuance.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Vol. 9, Part 1, Saturday, January 30, 1915. Page 484.

(Title of Court and Cause.)

On this day came the United States by its Assistant District Attorney, Mr. J. W. Thompson and also came the above petitioner in person and with his witnesses Benjamin Hornblower Clarke and Louis Aloysius Perry, and this cause was called for hearing. Thereupon the said petitioner and his witnesses were sworn and examined, whereupon it was by the Court ordered that said witnesses be excused

and that this cause be continued to February 13, 1915, at 10 o'clock A. M., for further hearing. [11]

Minutes of Court—February 13, 1915—Order Continuing Hearing to April 10, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Vol. 9, Part 1, Saturday, February 13, 1915. Page 508.

(Title of Court and Cause.)

On this day came the United States by its Assistant District Attorney, Mr. J. W. Thompson, and also came the above petitioner in person and without witnesses and this cause was called for further hearing. Thereupon it was by the Court ordered that this cause be continued to April 10, 1915, at 10 o'clock A. M., for further hearing. [12]

Minutes of Court—April 10, 1915—Order Continuing Hearing to April 24, 1915.

(Clemons, Presiding Judge.)

From the Minutes of the United States District Court, Vol. 9, Part 1, Saturday, April 10, 1915. Page 567.

(Title of Court and Cause.)

On this day came the above petitioner in person and without his witnesses, said witnesses having been heretofore examined and excused, and this cause was called for further hearing. Thereupon it was by the Court ordered that this cause be contin-

ued to April 24, 1915, at 10 o'clock A. M., for further hearing. [13]

Minutes of Court—April 24, 1915—Order on Hearing.

(Clemons, Presiding Judge.)

From the Minutes of the United States District Court, Vol. 9, Part 2, Saturday, April 24, 1915. Page 612.

(Title of Court and Cause.)

On this day came the United States by its Assistant District Attorney, Mr. J. W. Thompson, and also came the above petitioner in person and without his witnesses, said witnesses having been heretofore examined and excused, and this cause was called for further disposition. Thereupon it was by the Court ordered that this cause be continued to May 29, 1915, at 10 o'clock A. M., for further disposition. [14]

Minutes of Court—May 29, 1915—Order on Hearing.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Vol. 9, Part 2, Saturday, May 29, 1915. Page 680.

(Title of Court and Cause.)

On this day came the United States by its Assistant District Attorney, Mr. J. W. Thompson, and also came the above petitioner in person and without witnesses, said witnesses having been heretofore

examined and excused, and this cause was called for further disposition. Thereupon the said petitioner having filed his brief in open court, it was by the Court ordered that this cause be continued to June 26, 1915, at 10 o'clock A. M., for further disposition. [15]

Minutes of Court—June 26, 1915—Order on Hearing.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Vol. 9, Part 2, Saturday, June 26, 1915. Page 717.

(Title of Court and Cause.)

On this day came the United States by its Assistant District Attorney, Mr. J. W. Thompson, the above petitioner being absent, and this cause was called for further hearing. Thereupon it was by the Court ordered that this cause be continued to July 31, 1915, at 10 o'clock A. M., for further hearing. [16]

Minutes of Court—July 31, 1915—Order on Hearing.

(Clemons, Presiding Judge.)

From the Minutes of the United States District Court, Vol. 9, Part 2, Saturday, July 31, 1915. Page 737.

(Title of Court and Cause.)

On this day came the United States by its Assistant District Attorney, Mr. J. W. Thompson, said petitioner being absent, and this cause was called

for further disposition. Thereupon Mr. Thompson filed on behalf of the United States its brief herein and it was by the Court ordered that this cause be continued to August 28, 1915, at 10 o'clock A. M., for further disposition. [17]

Minutes of Court—August 28, 1915—Order of Continuance.

(Clemons, Presiding Judge.)

From the Minutes of the United States District Court, Vol. 9, Part 2, Saturday, August 28, 1915. Page 771.

(Title of Court and Cause.)

On this day came the United States by its Assistant District Attorney, Mr. J. W. Thompson, above petitioner being absent, and this cause was called for further disposition. Thereupon it was by the Court ordered that this cause be continued to September 25, 1915, at 10 o'clock A. M., for further disposition. [18]

Minutes of Court—September 25, 1915—Order of Continuance.

(Clemons, Presiding Judge.)

From the Minutes of the United States District Court, Vol. 9, Part 2, Saturday, September 25, 1915. Page 816.

(Title of Court and Cause.)

On this day came the United States by its Assistant District Attorney, Mr. J. W. Thompson, and said petitioner in person, and this cause was called

for decision. Thereupon it was by the Court ordered that this cause be continued to October 30, 1915, at 10 o'clock A. M., for decision. [19]

Minutes of Court—October 30, 1915—Order of Continuance.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Vol. 9, Part 2, Saturday, October 30, 1915. Page 877.

(Title of Court and Cause.)

On this day came the United States by its District Attorney, Mr. Jeff McCarn, and said petitioner in person, and this cause was called for disposition. Thereupon it was by the Court ordered that this cause be continued until called up for further disposition. [20]

Minutes of Court—November 27, 1915—Order of Continuance.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court, Vol. 9, Part 2, Saturday, November 27, 1915. Page 948.

(Title of Court and Cause.)

On this day came the United States by its District Attorney, Mr. Jeff McCarn, and also came the above petitioner, and this cause was called for decision. Thereupon it was by the Court ordered that this cause be continued to December 29, 1915, at 10 o'clock A. M., for decision. [21]

Minutes of Court—December 27, 1915—Order of Continuance.

(Clemons, Presiding Judge.)

From the Minutes of the United States District Court, Vol. 9, Part 2, Monday, December 27, 1915. Page 991.

(Title of Court and Cause.)

On this day came the United States by its District Attorney, Mr. Horace W. Vaughan, said petitioner being absent, and this cause was called for decision. Thereupon it was by the Court ordered that this cause be continued to January 29, 1916, at 10 o'clock A. M., for said decision. [22]

Minutes of Court—January 29, 1916—Order of Submission.

(CLEMONS, Presiding Judge.)

From the Minutes of the United States District Court, Vol. 9, Part 2, Saturday, January 29, 1916. Page 1057.

(Title of Court and Cause.)

On this day came the United States by its District Attorney Mr. Horace W. Vaughan, neither said petitioner or his witnesses being present, said witnesses being heretofore examined and excused from further attendance. Thereupon the case was by the Court taken under advisement. [23]

Minutes of Court—February 26, 1916—Order of Continuance.

(CLEMONS, Presiding Judge.)

From the Minutes of the United States District Court, Vol. 9, Part 2, Saturday, February 26, 1916. Page 1110.

(Title of Court and Cause.)

On this day came the United States by its Assistant District Attorney Mr. Samuel B. Kemp, neither said petitioner or his witnesses being present, said witnesses being heretofore sworn and examined and excused from further attendance, and this cause was called for decision. Thereupon it was by the Court ordered that this cause be continued to March 25, 1916, at 10 o'clock A. M., for decision. [24]

Minutes of Court—March 25, 1916—Order on Filing of Opinion, etc.

(CLEMONS, Presiding Judge.)

From the Minutes of the United States District Court, Vol. 9, Part 2, Saturday, March 25, 1916, Page 1158.

(Title of Court and Cause.)

On this day came the United States by its District Attorney Mr. Horace W. Vaughan and said petitioner in person, and this cause was called for decision. Thereupon the Court read and filed its decision denying said petition. [25]

*In the United States District Court, Territory of
Hawaii.*

APRIL, A. D. 1916, TERM.

No. 274.

In the Matter of TAKAO OZAWA, a Petitioner
for Naturalization.

Decision.

Filed Aug. 17, 1916, at 1 o'clock and 55 minutes
P. M. (Sgd.) George R. Clark, Clerk. _____
Deputy Clerk. [26]

*In the United States District Court, Territory of
Hawaii.*

APRIL, A. D. 1916, TERM.

No. 274.

In the Matter of TAKAO OZAWA, a Petitioner
for Naturalization.

March 25, 1916.

Aliens — Naturalization — Japanese: A person of
the Japanese race born in Japan, is not eligible
to citizenship under the naturalization laws.
Rev. Stat., sec. 2169.

Petition for Naturalization.

TAKAO OZAWA, *pro se*.

HORACE W. VAUGHAN, United States Dis-
trict Attorney, and J. W. THOMPSON, Assistant
United States Attorney, opposed. [27]

This petition for naturalization is opposed by the
United States district attorney on the ground

that the petitioner, being, as the facts are, a person of the Japanese race and born in Japan, is not eligible to citizenship under Revised Statutes, section 2169, which limits naturalization to "free white persons" and those of African nativity and descent. The other qualifications are found by the Court to be fully established, and are conceded by the Government. Twenty years' continuance residence in the United States, including over nine years' residence in Hawaii, graduation from the Berkeley (Cal.) High School, nearly three years' attendance at the University of California, the education of his children in American schools and churches, the maintenance of the English language in his home, are some of the facts in his behalf. And he has presented two briefs of his own authorship, in themselves ample proof of his qualifications of education and character. He makes the main points that in the statute the word "white" is "not used to exclude any race at all," or in other words is used "simply to distinguish black people from others," and that even in a narrow sense of the word "white" the Japanese are eligible to citizenship. Also, as to the word "free" in the expression "free white persons," the contention is made, that this word designates the quality of person and implies goodness, worthiness, excluding only improper persons.

The first contention is regarded by the petitioner as supported by the learned opinion of Judge Lowell in the case of *In re Halladjian*, 174 Fed. 834. A

brief discussion of this opinion is therefore called for, and may serve to enforce our own conclusions. The syllabus of the case reports the Court as holding: [28]

“That the word ‘white’ was used to classify the inhabitants and to include all persons not otherwise classified, not as synonymous with ‘European,’ there being in fact no ‘European’ or ‘white’ race as a distinctive class, or ‘Asiatic’ or ‘yellow’ race, including substantially all the people of Asia; and hence the term ‘free white persons’ included Armenians born in Asiatic Turkey.”

This is a broad ruling, and although a ruling was required only as to the eligibility of Armenians, it may appear even broad enough to divide the eligible classes into Africans and *all others*, subject of course to the exception, created by a statute of later date, in the case of Chinese. Without questioning Judge Lowell’s conclusion that Armenians are eligible to citizenship, it seems that he goes too far in saying, *Id.*, 843, that:

“From all these illustrations, which have been taken almost at random, it appears that the word ‘white’ has been used in colonial practice, in the federal statutes, and in the publications of the Government to designate persons not otherwise classified.”

His citation, for example, of the classification of the Massachusetts census of 1764, which included only whites, Negroes, mulattoes, Indians, and

“French neutrals,” and that of the Rhode Island census of 1748, which included only whites, blacks, and Indians, would be far from proof that Oriental races, particularly the Japanese, or even the indefinite race or races, were included or thought of at all. The most that would naturally be inferred from the use of the word “white” as a “catch-all,” as Judge Lowell characterizes it, *Id.*, 843, is the inclusion therein of all unclassified inhabitants then in the country and not as a rigid classification to endure for all time and to include particularly persons of the Oriental races or of the so-called “yellow” races, who, as will be seen, have at all times under accepted classifications been regarded as ethnologically distinct from the white race. And the fact that as occasion arose, from the presence of a noticeable number of Chinese or [29] Japanese, those new-comers received in the census reports a special classification, weakens very much the extreme view which may be implied from Judge Lowell’s opinion. If the word “white” was a catch-all, why was its use not generally continued, to include these later immigrants? Judge Lowell’s opinion itself shows that when the Oriental population, as represented first by the Chinese, came to be appreciable, beginning with the census of 1860 (*i. e.*, at the first opportunity after the census of 1850), the word “white” ceased to be used as a catch-all to designate those people, but they were specially classified by race. *Id.*, 844; also, 482, quoting from the Eleventh Census, part I., p. xciv. The fact that such classification was adopted as our

population of Oriental peoples became appreciable, belies Judge Lowell's statement, 174 Fed. 843-844, that "after the majority of Americans has come to believe that great differences separated the Chinese, and later the Japanese, from other immigrants, these persons were no longer classified as white." Too much is not to be inferred from the use of the words "white" and "black," or "white" and "negro," in early times when these were undoubtedly the only, or practically the only, classes here other than the Indians. Nor is undue credit to be given to even much later, and recent, census classifications which were "not uniform in all parts of the country." *Id.* 842-843, or where much was left to the discretion of the director of the census. *Id.*, 843. Far more reliance may fairly be placed upon the considered judgments of courts, rendered at least as early as 1878, or perhaps 1854, in contested cases,—upon the judgments of those whose peculiar duty it was to determine the meaning of this word "white."

Such a comprehensive meaning of the word "white" as that contended for, would include Indians, yet the Supreme Court [30] in 1884 did not regard the statute, Revised Statutes, section 2169, as so broad. See *Elk v. Wilkins*, 112 U. S. 94, 104, also the considerably earlier case of *Scott v. Sanford*, 19 How. 393, 420, which says, "Congress might . . . have authorized the naturalization of Indians, because they were aliens and foreigners." If Indians were excepted, then why not also the

racers of the Orient, who though since found to be more adaptable to our manners and customs, were in the earlier days regarded as strange peoples, of manners and customs incompatible with ours. The fact that more lately we have come to better appreciate, that, in the language of William Elliott Griffis ("The Japanese Nation in Evolution," 24),

"There is no necessary distinction between the Oriental and Occidental, the brown man and the white man. That the "yellow brain," and the Japanese heart are ultimately different from those of the Yankee or the Briton, is the notion of tradition, not the fact of science,"

does not justify the setting aside of an interpretation well-established prior to the date of any of the cases, an incomplete list of fourteen of which is submitted by the petitioner,—there being, it is understood, about fifty in all,—of Japanese who have been naturalized by State and Federal courts. The earliest of these fourteen cases, that of Seizo Matsumoto, naturalized by a court of Pierce County, Washington, is as recent as January, 1896, two years later than the case of *In re Saito*, 62 Fed. 126, and sixteen or more years subsequent to two cases which took a view broad enough to exclude Japanese: *In re Camille*, 6 Fed. 256, and *In re Ah Yup*, 1 Fed. Cas. 223, No. 104. Indeed, as early as 1827, Chancellor Kent inclined to the same opinion as the two cases just cited; for he says in his Commentaries, volume, 2 page 72:

“ The act of Congress confines the description of aliens capable of naturalization to ‘free white persons.’ I presume this excludes the inhabitants [31] of Africa, and their descendants; and it may become a question, to what extent persons of mixed blood are excluded, and what shades and degrees of mixture of color disqualify an alien from application for the benefits of the act of naturalization. Perhaps there might be difficulties also as to the copper-colored natives of America, or the yellow or tawny races of the Asiatics, and it may well be doubted whether any of them are ‘white persons’ within the purview of the law.”

And in 1854, the dictum of Chief Justice Murray of California in *People v. Hall*, 4 Cal. 399, 403, 404, is that “the word ‘white’ has a distinct signification, which *ex vitermini* excludes black, yellow and all other colors.”

In the case of *Ah Yup*, *supra*, in holding that Chinese are not white persons, Circuit Judge Sawyer in 1878 said:

“The word ‘white person,’ as well argued by petitioner’s counsel, taken in a strictly literal sense, constitute a very indefinite description of a class of persons, where none can be said to be legally white, and those called white may be found of every shade from the lightest blonde to the most swarthy brunette. But those words in this country at least, have undoubtedly acquired a well-settled meaning in common popu-

lar speech, and they are constantly used in the sense so acquired in the literature of the country, as well as in common parlance. As ordinarily used everywhere in the United States one would scarcely fail to understand that the party employing the words 'white person' would intend a person of the Caucasian race.

“In speaking of the various classifications of races, Webster in his dictionary says, “The common classification is that of Blumenbach, who makes five. 1. The Caucasian, or white race, to which belong the greater part of the European nations and those of Western Asia; 2. The Mongolian, or yellow race, occupying Tartary, China, Japan, etc.; 3. The Ethiopian or Negro (black) race, occupying all Africa, except the North; 4. The American or red race, containing the Indians of North and South America; and, 5. The Malay, or Brown race, occupying the islands of the Indian Archipelago’ etc. This division was adopted from Buffen, with some changes in names, and is founded on the combined characteristics of complection, hair and skull. Linnaeus makes four divisions, founded on the color of the skin; ‘1. European, whitish; 2. American, coppery; 3. Asiatic, tawny; and, 4. African, black.’ Culiver makes three; Caucasian, Mongel, and Negro. Others make many more, but no one includes the white, or Caucasian, with the Mongolian or yellow race; and no one of those

classifications recognizing color as one or the distinguishing characteristics includes the Mongolian in the white or whitish race.' See New American Encyclopedia, tit. 'Ethnology.' [32]

“Neither in popular language, in literature, nor in scientific nomenclature, do we ordinarily, if ever, find the words ‘white person’ used in a sense so comprehensive. Yet, in all, color, notwithstanding its indefiniteness as a word of description, is made an important factor in the basis adopted for the distinction and classification of races. I am not aware that the term ‘white person’ as used in the statutes as they have stood from 1802 till the late revision, was ever supposed to include a Mongolian. While I find nothing in the history of the country, in common or scientific usage, or in legislative proceedings, to indicate that Congress intended to include in the term ‘white person’ any other than an individual of the Caucasian race. I do find much in the proceedings of Congress to show that it was universally understood in that body, in its recent legislation, that it excluded Mongolian.

. . . Whatever latitudinarian construction might otherwise have been given to the term ‘white person,’ it is entirely clear that Congress intended by this legislation to exclude Mongolians from the right of naturalization.”

This case was determined four years before the enactment of a special statute prohibiting the naturalization of Chinese. 22 Stat. 53, 61. It is quoted at length to include its review of the then prevailing race classifications.

In 1880 in *In re Camille*, *supra*, 6 Fed. 257, Judge Deady approved of Judge Sawyer's view above quoted, though the case involved not a person of an Oriental race but one of Indian blood. See also, the specific reference to the Chinese, *Id.*, 258.

In 1894, Circuit Judge Colt, in the case of *In re Saito*, *supra*, rules directly on the eligibility of Japanese. He says:

“The history of legislation on this subject shows that Congress refused to eliminate ‘white’ from the statute for the reason that it would extend the privilege of naturalization to the Mongolian race, and that when, through inadvertence, this word was left out of the statute, it was again restored for the very purpose of such exclusion.

“The words of a statute are to be taken in their ordinary sense, unless it can be shown that they are used in a technical sense.

“From a common, popular standpoint, both in ancient and modern times, the races of mankind have been distinguished by difference in color, and they have been classified as the white, black, yellow, and brown races. [33]

“And this is true from a scientific point of view. Writers on ethnology and anthropology

base their division of mankind upon differences in physical rather than in intellectual or moral character, so that difference in color, conformation of skull, structure and arrangement of hair, and the general contour of the face are the marks which distinguish the various types. But, of all these marks, the color of the skin is considered the most important criterion for the distinction of race, and it lies in the foundation of the classification which scientists have adopted.”

Judge Hanford in the case of *In re Buntaro Mumagai*, 163 Fed. 922, 924, is of opinion that:

“The use of the words ‘white persons’ clearly indicates the intention of Congress to maintain a line of demarkation between races, and to extend the privilege of naturalization only to those of that race which is predominant in this country.”

He cites in support of this opinion the cases of *Ah Yup* and *Saito*, *supra*, and also the case of *In re Yamashita*, 30 Wash. 234, 70 Pac. 42 (1902). His opinion is followed in the case of *In re Knight*, 171 Fed. 299, in which the applicant was one-quarter Japanese and one-quarter Chinese and in which Judge Chatfield holds, *Id.*, 300, that neither Chinese nor Japanese can be naturalized,—though, it is true, it was only necessary for him to hold for the purposes of the case, that the substantial element of Chinese blood was sufficient to exclude the petitioner, regardless of the eligibility of Japanese.

And the Circuit Court of Appeals of the Fourth Circuit in *Bessho v. United States*, 178 Fed. 245, and Judge Cushman in *In re Young*, 198 Fed. 715, held expressly that Japanese aliens are ineligible to citizenship.

To meet any argument that the enactment of a special statute prohibiting naturalization only of Chinese, implies the eligibility of the Japanese, who are not included in any special prohibition, reference is made to *In re Kanaka Niau*, 21 Pac. 993-994, 6 Utah, 259 (1889), and *Bessho vs. United States*, 178 Fed. 245, 248 (Circuit Court of Appeals), also in *In re Ah Yup*, [34] 1 Fed. Cas. 224, decided as above noted, before the enactment of the special prohibition against Chinese, *In re Saito*, 62 Fed. 127, and *Fong Yue Ting vs. United States*, 149 U. S. 698, 716.

As against these authorities, no reported case is known in which a person of the Japanese race has been naturalized, in which the Court has rendered a written opinion to justify its ruling or in which there has been a contest to evoke the most thorough consideration. There are recent judicial opinions, that the statute in its present form is not to be "construed in the light of the knowledge and conception of the legislators who passed the original statute in 1790, without regard to the more definite and special knowledge and conception which must be attributed to the legislators who upon reconsideration of the whole subject, enacted subsequent statutes including that now in force." *Dow vs. United States*, 226 Fed. 145, 147. See also *In re Muddari*, 176 Fed.

465, 467, and a learned opinion of Judge Morrison of the Superior Court of California, rendered May 7, 1914, in the case of *In re Sakharan Ganesh Pandit*. But the Dow case, for example, in using the language just quoted and in referring to more recent legislation, had in mind the legislation of 1875 in which the words "free white persons," omitted by error from the revision of 1873 (62 Fed. 127) were restored. 226 Fed. 147. And, aside from the circumstance that the decisions just referred to were dealing with border-line cases of races closely related to what may be loosely called the "Europeans," who were perhaps in 1780 here considered as the only white people (226 Fed. 145, 147, 148), it is of most practical importance to bear in mind that the ethnological divisions which classed the Japanese as of the Mongolian or yellow race, were what the legislators [35] of 1875 and the courts thereafter down even to the present have had to rely upon as their guides. See quotation in *In re Ah Yup, supra* (1878) from Webster's Dictionary, probably the most widely circulated work in America except the Bible, and even the very recent edition of the *Encyclopedia Britannica*, 11th ed., vol. 9, page 851. This classification was undoubtedly well known in this country early in the last century, as it was in Germany before 1790, the date of the original enactment of the statute. Even if, as the petitioner contends, Blumenbach's classification is unscientific (see *In re Dow*, 213 Fed. 355, 358, 359, 365; *In re Mudarri*, 176 Fed. 466, 467), nevertheless it has not yet been superseded so far as to assimilate the Jap-

anese with what for many years, at least as early as 1854, and especially before 1875, has been generally regarded as the "white" race.

Tylor, one of the highest authorities, in his book of 1881, "Anthropology" (Appleton's ed. 63, 96-98), points out that the Japanese have characteristics of the "Mongoloid type of man" in which one prominent feature is that "their skin is brownish yellow." The most recent encyclopedic authority, 9 Enc. Britt. 11th ed. (1910), 851, classes the Japanese as Mongolic or yellow, though placing the Ainos, a small element of the people of Japan, as Caucasian or white. See also 15 Id., 165. In addition to this unobstructed current of authority reference may be had to a very late work, "A History of the Japanese People," by Captain F. Brinkley, included by Dr. William Elliot Griffis in a list of the English scholars who "have made obsolete most of the old European learning about Japan." "The Japanese Nation in Evolution," 20.

"The Japanese are of distinctly small stature. . . . Their neighbors, the Chinese and the Koreans, are taller. . . . Nevertheless, Professor Dr. Baelz, the most eminent authority on this subject, avers that 'the three great [36] nations of Eastern Asia are essentially of the same race,' and that observers who consider them to be distinct 'have been misled by external appearances.'" Brinkley, History, etc. *supra*, 57-58, see also 59, 60. That the Japanese have, however, an element of white, Caucasian or Iranian, blood is noted. Id. 58, see also 45, 54, 55.

Another recent book may be quoted as giving the opinion of a Japanese educator, "The Life and Thought of Japan," by Okakura Yoshisaburo: (published by E. P. Dutton & Co., 1913):

"And as to those swarms of immigration from China and Korea, who crossed the sea at various periods in the early days of Japanese history, it did not take many generations before they came to adopt the views of the people with whom it was their interest in every way to get mixed, and thus they lost their own identity. In this manner, notwithstanding an extensive admixture of foreign elements to our original stock, we find ourselves as closely unified a nation as if we had been perfectly homogeneous from the very beginning. One and the same blood is felt to run through our veins, characterized by one and the same set of religious and moral ideas. This may perhaps be due to the fact that the three elements—the conquering, the conquered, and the immigrating—belonged originally to the same Mongolian race, with very little trace of any mingling of Ainu and Malayan blood." *Id.*, 48, 49.

"You will come, at least to some extent, to acknowledge the truth of the statement so often made in books on Japan, that there are two distinct racial face-types among the present Japanese . . . Be it remembered that both these types are Mongol. Both have the yellowish skin, the straight hair, the scanty beard, the broadish skull, the more or less oblique eyes,

and the somewhat high cheekbones, which characterize all well-established branches of the Mongol race." *Id.*, 41.

"The relation here displayed between the living and the departed may be considered as a characteristic of the Mongolian race to which both the Japanese and the Chinese belong." *Id.*, 54.

Whether these views just quoted are wholly accurate or not, I do not undertake to say. They are at all events, in line with the statements of scientific works which have been, as already intimated, the guides of our courts in all cases known to have been contested or in which the Court rendered a written opinion,—even though recognizing that there is in the Japanese an element of white blood. See reference to Brinkley, *supra*.

Dr. Griffis' interesting book, in a broad spirit of [37] tolerance, notable in one for forty years in the closest touch with Japan and for some years a resident there, goes far to demonstrate the conclusion that "the Japanese are not Mongolian." "The Japanese Nation in Evolution," 400. Rev. Dr. Dor-
emus Scudder, of Honolulu, who is himself intimately acquainted with the Japanese people, and who may be termed a friend of the court, has submitted in behalf of the petitioner this authority as tending at least to support the view that the Japanese are "white persons" even in a narrow sense of those words. But Dr. Griffis, after all, does not seem to be at variance with the common authorities on ethnology. It is plain that he is speaking

of the later development of the Japanese away from all that is narrow in the sense of “Mongolic,” or “Oriental,”—of their “both deserving and winning success,” *Id.*, 400, in competition, or rather comparison, with the most progressive and enlightened peoples of the world. He recognizes the Mongolic element constantly. “White men, belonging to the great Aryan family and speaking a language akin to the Indo-Germanic tongues, were the first ‘Japanese,’ who are a composite and not a pure ‘Mongolian’ race. Their inheritance of blood and temperament partakes of the potencies of both Europe and Asia.” *Id.*, 1, also 21, 25, 349. He also recognizes the Malay element, which, at least “the Malay peoples of the Eastern archipelago,”—the last edition of the *Encyclopedia Britannica* includes in the Mongolic or yellow division of the races, though “less typical” but with the “Mongolic elements so predominant as to warrant inclusion.” Says Dr. Griffis, *Id.*, 30, “Those most familiar with the races, the Mongol, Aryan and the Malay, now so differentiated, consider that in the Nippon composite the Malay strain predominates.” [38]

Also *Id.*, 30–31 et seq. Though Dr. Griffis believes that “the basic stock of the Japanese people is Aino” (a white people) . . . “by ‘basic stock’ . . . mean(ing) the oldest race in the islands” (*Id.* 5, also 1), yet he speaks of the Ainos as having been “crowded out” (*Id.*, 9)—elsewhere characterizing the process as absorption not elimination (*Id.*, 26); and Brinkley, *History, etc., supra*, 56 (see also 44), notes the “steady extermination for twenty-five

centuries” of the Ainu element, characterized by him as having “left as little trace in the Japanese nation.” *Id.*, 58.

Intelligent men, of course, agree with Dr. Griffis that the words “Mongolian” and “Oriental,” as mere epithets, can bear no sense of unworthiness or inferiority in the case of the Japanese people.

A few words are called for by the cited examples of the Magyars of Hungary and of the very dark Portuguese, who are both freely admitted to citizenship, in spite of the fact that the former are Mongolic in origin and that the latter are in a strict sense of the word not “white.” Many of the decisions admit the difficulties inherent in the statutory classification, and even Judge Lowell has declared that he “greatly hopes that an amendment of the statutes will make quite clear the meaning of the word ‘white’ in section 2169.” *In re Mudarri*, 176 Fed. 465, 467. Indeed in this latter case his language seems to cast doubt upon the practicability of the rule applied in the *Holladjian* case. He says, 176 Fed. 467,

“No modern theory has gained general acceptance. Hardly anyone classifies any human race as white, and none can be applied under section 2169 without making distinctions which Congress certainly did not intend to draw; e. g., a distinction between the inhabitants of different parts of France. Thus classification by ethnological race is almost or quite impossible. On the other hand, to give the phrase ‘white person’ the meaning which it bore when the first

naturalization act was passed, viz., any person not otherwise designated or classified, is to make naturalization depend upon the varying [39] and conflicting classification of persons in the usage of successive generations and of different parts of a large country.”

But the examples just cited may be regarded as exceptional. Centuries before our first legislation on naturalization, the Magyars had “become physically assimilated to the western peoples.” 17 Enc. Britt., 11th ed., 393, 394. “In their new environment their Mongolic physical type has gradually conformed to the normal European standard.” Webster’s New International Dictionary (1913), tit. “Magyar,” quoting A. H. Keane. They have long been “one of the dominant people of Hungary—which they conquered at the close of the ninth century,” *Id.*; and they with the Portuguese of varying degrees of color, are within the meaning of “white,” as commonly understood, and as explained by Judge Cushman, in the case of *In re Young*, 198 Fed., 716, 717:

“The term ‘white person’ must be given its common or popular meaning. As commonly understood, the expression includes all European races and those Caucasians belonging to the races around the Mediterranean Sea, whether they are considered as ‘fair whites’ or ‘dark whites,’ as classified by Huxley, and notwithstanding that certain of the southern and eastern European races are technically classified as of Mongolian or Tartar origin.

“It is just as certain that, whether we consider the Japanese as of Mongolian race, or the Malay race, they are not included in what are commonly understood as ‘white persons.’ ”

See, also, *Dow v. United States*, 226 Fed. 145, 147.

Though the intent of the word ‘white’ is determinative of the case, we may well dispose of the petitioner’s argument that the use of the word “free” in the expression “free white persons” emphasizes the element of worthiness, good quality, as against the element of color. The use of the word “free” in the debates in the Constitutional Convention in 1787 affords most reliable evidence of what the word meant at about and shortly before, its first use in the naturalization laws. It is recorded that Gouverneur Morris in moving to insert “free” before the word “inhabitants,” with reference to the apportionment [40] of members of the House of Representatives, used the word as the opposite of “slave.” Madison’s *Journal of the Constitutional Convention* (Albert Scott & Co., Chicago, 1893), 478. And such has always been its intent, not only when this statute had its origin but shortly after the Civil War when the statute was revised after a brief suspension—though the retention of the word “free” had then become unnecessary.

As lately as 1906 Congress went over the whole law of naturalization, and yet in the face of the well-known rulings of the published decisions which had interpreted the particular section here in question, the section was left just as it was. This is a very persuasive reason for the conclusion that Congress

acquiesced in, and adopted, the interpretation which the courts had put upon its own work. 226 Fed. 145, 148. The remedy for uncertainty in the statute, or for its unfairness or inconsistency with the theory and spirit of our institutions, lies, of course, with the legislative body.

In view of the foregoing authorities and considerations, the Court finds that the petitioner is not qualified under Revised Statutes, section 2169, and must therefore deny his petition; and it is so ordered, in spite of the finding hereby made that he has fully established the allegations of his petition and, except as to the requirements of section 2169, is in every way eminently qualified under the statutes to become an American citizen.

(Sgd.) CHAS. F. CLEMONS,
Judge of the United States District Court for the
Territory of Hawaii.

[Endorsed]: No. 274. (Title of Court and Cause).
Decision. Filed Aug. 17, 1916, at 1 o'clock and 55
Minutes P. M. (Sgd.) George R. Clark, Clerk.
[41]

*In the United States District Court, Territory of
Hawaii.*

April, A. D. 1916 Term.

No. 274.

In the Matter of TAKAO OZAWA, a Petitioner for
Naturalization.

Bill of Exceptions.

BE IT REMEMBERED that at the trial of the above-entitled cause the petitioner appeared in person, and the petition was opposed by the United States District Attorney for the District of Hawaii on the ground that the petitioner, being a person of the Japanese race and born in Japan, is not eligible to citizenship under Revised Statutes, Section 2169. The other qualifications were proved, including all the statements in the petition, and found to be fully established, and are so conceded by the government.

The applicant had for twenty years continuously resided in the United States, including the last nine years' residence in Hawaii. He graduated from the Berkeley, California, High School, and was for nearly three years a student at the University of California, until it was closed by the earthquake in 1906. He has educated his children in American schools and he and his family have attended American churches, and he has maintained the use of the English language in his home. He presented two [42] briefs of his own authorship, which are ample proof of his qualification, by education and character.

The Court found that the contention of the United States District Attorney is correct and that, although the applicant was eligible for citizenship in every other respect, yet having been born in Japan and being of the Japanese race, as a matter of law

he was not eligible to naturalization, and denied the petition, to which the petitioner excepted.

DATED, Honolulu, T. H., August 17, 1916.

(Sgd.) CASTLE & WITHINGTON,

(Sgd.) J. LIGHTFOOT,

Attorneys for Petitioner.

The foregoing Bill of Exceptions is allowed and settled this 17th day of August, 1916.

(Sgd.) CHAS. F. CLEMONS,

Judge.

O. K.—(Sgd.) S. C. HUBER, U. S. Atty.

[Endorsed]: No. 274. (Title of Court and Cause.)
Bill of Exceptions. Filed Aug. 17, 1916, at 1 o'clock
and 55 minutes P. M. (Sgd.) George R. Clark,
Clerk. [43]

**Minutes of Court—September 23, 1916—Order
Allowing Appeal.**

From the Minutes of the United States District
Court, Vol. 9, Part 2, Saturday, September 23,
1916, Page 172.

[Title of Court and Cause.]

On this day came the United States by its District
Attorney, Mr. S. C. Huber, and also came Mr. J.
Lightfoot, counsel on behalf of the above-named
petitioner, and this cause was called for perfection
of appeal by said petitioner. Thereupon Mr. Light-
foot moved that this cause be appealed to the Ninth
Circuit Court of Appeals, San Francisco, California.
The satisfactory documents having been filed, said
motion was by the Court allowed. [44]

*In the United States District Court, Territory of
Hawaii.*

April A. D. 1916 Term.

No. 274.

In the Matter of TAKAO OZAWA, a Petitioner for
Naturalization.

Petition for an Allowance of Appeal.

To the Honorable HORACE W. VAUGHAN, Dis-
trict Judge, Presiding Therein:

The above-named petitioner, conceiving himself aggrieved by the decision and order made and entered herein on March 25, 1916, denying the application of the petitioner for naturalization, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the said decision and order, for the reasons specified in the Assignment of Errors hereto attached and he prays that this appeal may be allowed, and that a transcript of the record, papers and proceedings upon which said decision and order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

DATED Honolulu, T. H., September 25, 1916.

(Sgd.) CASTLE & WITHINGTON,

(Sgd.) J. LIGHTFOOT,

Attorneys for Petitioner. [45]

**Order Allowing Appeal and Fixing Supersedeas
Bond.**

The foregoing petition is hereby granted and the appeal allowed; and that is ordered that a certified

transcript of the record, papers and proceedings herein be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and that the amount of the bond on appeal be fixed at the sum of five hundred dollars (\$500), the same to act as a supersedeas bond and also as a bond for costs and damages on appeal.

Done in open court this 25th day of September, 1916.

(Sgd.) HORACE W. VAUGHAN,
Judge.

[Endorsed]: No. 274. (Title of Court and Cause.) Petition for an Allowance of Appeal. Filed Sep. 23, 1916, at 2 o'clock and 10 minutes P. M. George R. Clark, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. [46]

In the United States District Court, Territory of Hawaii.

April A. D. 1916 Term.

No. 274.

In the Matter of TAKAO OZAWA, a Petitioner for Naturalization.

Assignment of Errors.

Now comes the above-named petitioner, Takao Ozawa, and says that in the record and proceedings in the above-entitled cause there is manifest error in this to wit:

1. That the said Court erred in sustaining the objection of the United States District Attorney for

the District of Hawaii to the granting of a naturalization certificate on the ground that the applicant, being a person of the Japanese race and born in Japan, is not eligible to citizenship under Revised Statutes, Section 2169, the petitioner's qualifications in other respects having been found by the Court to be fully established and the same being conceded by the government.

2. That the said Court erred in holding that the term "free white person" as used in such statute cannot include a person of the Japanese race.

3. That the said Court erred in denying a certificate of naturalization and citizenship to the petitioner.

Dated Honolulu, T. H., September 25th, 1916.

(Sgd.) CASTLE & WITHINGTON,

(Sgd.) J. LIGHTFOOT,

Attorneys for Petitioner. [47]

[Endorsed]: No. 274. (Title of Court and Cause.)
Assignment of Errors. Filed Sep-23-1916, at 2
o'clock and 10 minutes P. M. George R. Clark,
Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk.

[48]

*In the United States District Court, Territory of
Hawaii.*

April A. D. 1916, Term.

No. 274.

In the Matter of TAKAO OZAWA, a Petitioner for
Naturalization.

CITATION ON APPEAL.

Filed Sep. 23, 1916, at 2 O'clock and 10 Minutes
P. M. George R. Clark, Clerk. By Wm. L. Rosa,
Deputy Clerk. [49]

*In the United States District Court, Territory of
Hawaii.*

April A. D. 1916 Term.

No. 274.

In the Matter of TAKAO OZAWA, a Petitioner for
Naturalization.

CITATION ON APPEAL.

United States of America,—ss.

The President of the United States to the United
States of America, and S. C. Huber, Its Attor-
ney, Greeting:

You are hereby cited and admonished to be and
appear at the United States Circuit Court of Ap-
peals for the Ninth Circuit, to be held at the City
and County of San Francisco, State of California,
within thirty days from the date of this Writ, pur-
suant to an order allowing an appeal, filed in the
clerk's office of the United States District Court for
the District and Territory of Hawaii, wherein Takao
Ozawa is appellant and you are appellee, to show
cause, if any there be, why the judgment in said ap-
peal mentioned should not be corrected, and speedy
justice should not be done to the parties in that be-
half.

Witness the Honorable EDWARD DOUGLASS
WHITE, Chief Justice of the Supreme Court of the

United States of America, this 25th day of [50]
September, A. D. 1916, and of the Independence of
the United States the one hundred and fortieth.

HORACE W. VAUGHAN,

Judge U. S. District Court, District and Territory
of Hawaii.

[Seal] Attest: GEORGE R. CLARK,
 Clerk, U. S. District Court.
 By Wm. L. ROSA,
 Deputy.

Received a copy of the within citation.

S. C. HUBER,
United States Attorney. [51]

*In the United States District Court, Territory of
Hawaii.*

April A. D. 1916, Term.

No. 274.

In the Matter of TAKAO OZAWA, a Petitioner for
Naturalization.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS
that Takao Ozawa, as principal, and the United
States Fidelity and Guaranty Company, of Balti-
more, Maryland, U. S., as surety, are held and firmly
bound unto the United States of America in the
penal sum of five hundred dollars, (\$500), for the
payment of which well and truly to be made to said
United States of America we bind ourselves and our

respective heirs, executors, administrators and successors firmly by these presents.

THE CONDITION of the above obligation is such that

WHEREAS, on the 25th day of September, A. D. 1916, the above bounden principal perfected his appeal to the United States Circuit Court of Appeals of the Ninth Circuit from that certain judgment made and entered in the above-entitled court and cause on the 25th day of March, A. D. 1916, by the Honorable CHARLES F. CLEMONS, Judge of said court.

NOW THEREFORE, if the said principal shall prosecute his said appeal to effect and answer all damages and costs if he fails to sustain his said appeal then this obligation shall be void, otherwise, it shall remain in full force and effect. [52]

IN WITNESS WHEREOF the said Takao Ozawa has hereunto set his hand and seal and the said The United States Fidelity and Guaranty Company, of Baltimore, Maryland, U. S. has caused its corporate name and seal to be hereto signed and affixed this 25th day of September, A. D., 1916.

(Sgd.) TAKAO OZAWA,

Principal.

UNITED STATES FIDELITY AND
GUARANTY COMPANY,

[Seal]

By (Sgd.) H. F. ULRICHS,

Attorney in Fact, Surety.

The foregoing bond is approved.

(Sgd.) HORACE W. VAUGHAN,
Judge, United States District Court, Territory of
Hawaii.

[Endorsed]: No. 274. (Title of Court and
Cause.) Bond on Appeal. Filed Sep. 23, 1916, at
2 o'clock and 10 Minutes P. M. George R. Clark,
Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk.
[53]

*In the United States District Court, Territory of
Hawaii.*

April A. D. 1916, Term.

No. 274.

In the Matter of TAKAO OZAWA, a Petitioner for
Naturalization.

Acknowledgment of Receipt of Papers on Appeal.

Received a copy of the foregoing Petition for and
allowance of Appeal, Assignment of Errors, Citation
on Appeal and Bond on Appeal, this 25th day of Sep-
tember, A. D. 1916.

(Sgd.) S. C. HUBER,
United States District Attorney.

[Endorsed]: No. 274. (Title of Court and
Cause.) Receipt for Copies. Filed Sep. 23, 1916,
at 2 o'clock and 10 Minutes P. M. George R. Clark,
Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk.
[54]

*In the United States District Court, Territory of
Hawaii.*

April A. D. 1916, Term.

No. 274.

In the Matter of TAKAO OZAWA, a Petitioner for
Naturalization.

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record in this cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and include in said transcript the following, pleadings, proceedings and papers on file, to wit:

1. Declaration of Intention, dated August 1, 1902, taken before the clerk of the Superior Court, County of Alameda, State of California.

2. Petition for Naturalization, filed in the United States District Court for the Territory of Hawaii, on October 16, 1914, with affidavit of petitioner and witnesses attached thereto, also the order of court denying the petition attached thereto.

3. Decision of Honorable CHARLES F. CLEM-ONS, dated March 25, 1916.

4. Bill of Exceptions, filed August 17, 1916. [55]

5. Petition for an Allowance of Appeal.

6. Assignment of Errors.

7. Citation on Appeal.

8. Bond on Appeal.

9. Receipt for Copies.

10. All Minute Entries in the above-entitled cause.

11. This Praecept.

Said transcript to be prepared as recorded by law and the rules of this court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the clerk of said Circuit Court of Appeals in San Francisco, on or before the 23d day of October, A. D., 1916.

(Sgd) CASTLE & WITHINGTON,

(Sgd) J. LIGHTFOOT,

Attorneys for Petitioner.

[Endorsed]: No. 274. (Title of Court and Cause.)
Praecept. Filed Oct. 5, 1916, at 9 o'clock and 29
Minutes A. M., (Sgd) George R. Clark, Clerk. [56]

*In the United States District Court in and for the
District and Territory of Hawaii.*

No. 274.

In the Matter of TAKAO OZAWA, a Petitioner
for Naturalization.

**Certificate of Clerk U. S. District Court, to
Transcript of Record.**

United States of America,
District of Hawaii,—ss.

I, George R. Clark, Clerk of the District Court of
the United States for the District of Hawaii, do
hereby certify the foregoing pages, numbered from

1 to 57, inclusive, to be a true and complete transcript of the record and proceedings had in said court in the matter of Takao Ozawa, a petitioner for naturalization, as the same remains of record and on file in my office, and I further certify that I hereto annex the original citation on appeal and order extending time to transmit record on appeal in said cause.

I further certify that the cost of the foregoing transcript of record is \$14.65, and that said amount has been paid by appellant.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 17th day of November, A. D. 1916.

[Seal]

GEORGE R. CLARK.

Clerk of the United States District Court, Territory of Hawaii. [57]

[Endorsed]: No. 2888. United States Circuit Court of Appeal for the Ninth Circuit. Takao Ozawa, Appellant, vs. The United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Hawaii.

Filed November 29, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.